

May 2, 2003
DECISION AND ORDER
OF THE DEPARTMENT OF ENERGY

Appeal

Name of Petitioner: Caroline C. Roberts

Date of Filing: March 17, 2003

Case Number: TFA-0022

On March 17, 2003, Caroline C. Roberts (Roberts) filed an Appeal from a determination issued to her on February 24, 2003, by the Office of Inspector General (IG) of the Department of Energy (DOE). That determination responded to a request for information she filed under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by the DOE in 10 C.F.R. Part 1004. This Appeal, if granted, would require the DOE to release the withheld information.

The FOIA generally requires that documents held by the federal government be released to the public upon request. However, Congress has provided nine exemptions to the FOIA which set forth the types of information agencies are not required to release. Under the DOE's regulations, a document exempt from disclosure under the FOIA shall nonetheless be released to the public whenever the DOE determines that disclosure is not contrary to federal law and in the public interest. 10 C.F.R. § 1004.1.

I. Background

On January 8, 2003, Roberts wrote to the FOIA/Privacy Act Division at DOE headquarters and requested various documents including copies of IG documents related to Computer One, Inc., Caroline C. Roberts, or contracts numbered 60-8024, AB-2485, AB-2486, and BD-0962 from 1995 through 2002. The FOIA/Privacy Act Division forwarded the request to the IG. The IG conducted a search of its files and located 19 responsive documents. On February 5, 2003, the IG notified Roberts in a determination letter that it was releasing one document in its entirety and making partial disclosure of the other documents. Material in the partially disclosed documents was withheld pursuant to FOIA Exemptions 6 and 7(C). In this Appeal, Roberts challenges the IG's withholding of the partially disclosed documents and the determination that a public interest outweighs the privacy interests at issue. */

*/ In her Appeal, Roberts also contends that numerous documents requested in Paragraphs 1, 2, 3, and 5
(continued...)

II. Analysis

A. Exemptions 6 and 7(C)

Exemption 6 shields from disclosure “[p]ersonnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(6); 10 C. F. R. § 1004.10(b)(6). The purpose of Exemption 6 is to “protect individuals from the injury and embarrassment that can result from the unnecessary disclosure of personal information.” *Department of State v. Washington Post Co.*, 456 U.S. 595, 599 (1982). We find that the withheld documents meet the threshold test of Exemption 6 as they are “similar files,” the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Exemption 7(C) allows an agency to withhold “records or information compiled for law enforcement purposes, if release of such law enforcement records or information . . . could reasonably be expected to constitute an unwarranted invasion of personal privacy. . . .” 5 U.S.C. § 552(b)(7)(C); 10 C.F.R. § 1004.10(b)(7)(iii). The threshold requirement in any Exemption 7 inquiry is whether the documents are compiled for law enforcement purposes, that is, as part of or in connection with an agency law enforcement proceeding. See *William Payne*, 26 DOE ¶ 80,144 (1996); *F.B.I. v. Abramson*, 456 U.S. 615, 622 (1982). The IG is a law enforcement body charged with investigating and correcting waste, fraud or abuse in programs administered or financed by the DOE. See Inspector General Act of 1978, codified as amended at 5 U.S.C. App. §§ 2(1)-(2), 4(a)(1), (3)-(4), 6(a)(1)-(4), 7(a), 9(a)(1)(E). As a result of its duties, we find that the IG compiles reports involving official misconduct for “law enforcement purposes” within the meaning of Exemption 7(C). See *Burlin McKinney*, 25 DOE ¶ 80,149 (1995).

In order to determine whether information may be withheld under Exemption 6 or 7(C), an agency must undertake a three-step analysis. First, the agency must determine whether a significant privacy interest would be invaded by the disclosure of the record. If no privacy interest is identified, the record may not be withheld pursuant to either exemption. *Ripskis v. Department of HUD*, 746 F.2d 1, 3 (D.C. Cir. 1984) (*Ripskis*). Second, the agency must determine whether release of the document would further the public interest by shedding light on the operations and activities of the government. See *Hopkins v. Department of HUD*, 929 F.2d 81, 88 (2d Cir. 1991); *Department of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989) (*Reporters Committee*); *FLRA v. Department of Treasury Financial Management Service*, 884 F.2d 1446, 1451 (D.C. Cir. 1989), *cert. denied*, 110 S. Ct. 864 (1990). Finally, the agency must weigh the privacy interests it has identified against the public interest in order to determine whether the release of the record would constitute a clearly unwarranted invasion of personal privacy (the Exemption 6 standard), or could reasonably be expected to constitute an unwarranted invasion of personal privacy (the Exemption 7(C)

*/ (...continued)

of her request were not identified in DOE’s determination Letter. The IG has informed us that the documents requested in Paragraphs 1, 2, 3 and 5 of Roberts’ request were not IG documents but rather documents possessed by Sandia National Laboratory (SNL). See Record of Telephone Conversation between Ruby Isla, Attorney, IG and Kimberly Jenkins-Chapman, Attorney, Office of Hearings and Appeals (April 23, 2003). Those portions of Appellant’s request were referred to SNL for response.

standard). *Reporters Committee*, 489 U.S. at 762-770. See generally *Ripskis*, 746 F.2d at 3 (Exemption 6); *Stone v. FBI*, 727 F. Supp. 662, 663-663 (D.D.C. 1990) (Exemption 7(C)).

We have previously considered cases in which both Exemptions 6 and 7(C) were invoked, and we stated that in such cases, providing the Exemption 7 threshold requiring a valid law enforcement purpose is met, we would analyze the withholding only under Exemption 7(C), the broader of the two exemptions. See, e.g., *David Ridenour*, 27 DOE ¶ 80,143 (1998); *Richard Levernier*, 26 DOE ¶ 80,182 (1997); *K.D. Moseley*, 22 DOE ¶ 80,124 (1992). Since, as discussed below, the responsive documents that were withheld pursuant to Exemptions 6 and 7 (C) were also compiled for law enforcement purposes, any document that satisfies Exemption 7(C)'s "reasonableness" standard will be protected. Conversely, documents not protected by Exemption 7(C) will be unable to satisfy Exemption 6's more restrictive requirement that they constitute a clearly unwarranted invasion of personal privacy.

1. Privacy Interest

In its determination, the IG stated that the partially withheld documents contain names and information that would tend to disclose the identity of certain individuals involved in IG enforcement matters, which in this case include subjects, witnesses, sources of information, and other individuals. According to the IG, these individuals are "entitled to privacy protections so that they will be free from harassment, intimidation and other personal intrusions." Determination Letter at 1.

Because of the obvious possibility of harassment, intimidation, or other personal intrusions, the courts have consistently recognized significant privacy interests in the identities of individuals providing information to government investigators. See *Department of State v. Ray*, 502 U.S. 154, 176 (1991) ("[t]he invasion of privacy becomes significant when personal information is linked to particular interviewees"); *Safecard Services, Inc., v. S.E.C.*, 926 F.2d 1197 (D.C. Cir. 1991) (*Safecard*); *Blumberg, Seng, Ikeda & Albers*, 25 DOE ¶ 80,124 at 80,563 (1995); *James Schwab*, 21 DOE ¶ 80,117 at 80,556 (1991). Therefore, we find that the individuals whose identities are being withheld in this case have significant privacy interests in maintaining their confidentiality.

2. Public Interest in Disclosure

Having established the existence of a privacy interest, the next step is to determine whether there is a public interest in disclosure. The Supreme Court has held that there is a public interest in disclosure of information that "sheds light on an agency's performance of its statutory duties." *Reporters Committee*, 489 U.S. at 773. See *Marlene Flor*, 26 DOE ¶ 80,104 at 80,511 (1996) (*Flor*). The requester has the burden of establishing that disclosure would serve the public interest. *Flor*, 26 DOE at 80,511 (quoting *Carter v. Department of Commerce*, 830 F.2d 388 (D.C. Cir. 1987)). It is well settled that disclosure of the identity of individuals who have provided information to government investigators is not "affected with the public interest." See, e.g., *Safecard*, 926 F.2d at 1205. In her Appeal, Roberts did not offer any explanation of why she believes release of the material would be in the public interest. In fact, she did not address this issue at all other than stating

that the public interest determination made by the IG is “erroneous.” Appeal at 1. Therefore, we find that there is no public interest in the disclosure of the documents at issue.

3. The Balancing Test

In determining whether the disclosure of law enforcement records could reasonably be expected to constitute an unwarranted invasion of personal privacy, courts have used a balancing test, weighing the privacy interests that would be infringed against the public interest in disclosure. *Reporters Committee*, 489 U.S. at 762 (1989); *Safecard*, 926 F.2d 1197 (D.C. Cir. 1991).

We have concluded above that there is a cognizable privacy interest at stake in this case. Moreover, we found that Roberts has not provided any information about the existence of a public interest in the disclosure of the withheld information. After a thorough examination, we found no public interest in the withheld material. In the absence of any public interest to weigh against the real and identifiable privacy interest, the privacy interest must prevail.

C. Segregability

The FOIA requires that “[a]ny reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt. . . .” 5 U.S.C. § 552(b) (1982). Our review of the documents found that the IG properly withheld portions of the documents at issue in this case.

It Is Therefore Ordered That:

- (1) The Appeal filed by Caroline C. Roberts on March 17, 2003, OHA Case No. TFA-0022, is hereby denied.
- (2) This is a final order of the Department of Energy of which any aggrieved party may seek judicial review pursuant to the provisions of 5 U.S.C. § 552(a)(4)(B). Judicial review may be sought in the district in which the requester resides or has a principal place of business, or in which the agency records are situated, or in the District of Columbia.

George B. Breznay
Director
Office of Hearings and Appeals

Date: May 2, 2003